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LEGAL AND JUST USE OF ARMED FORCE: AN ANALYSIS OF UNITED STATES INVOLVEMENT IN PANAMA AND IRAQ

by
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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

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TABLE OF CONTENTS

LEGAL AND JUST USE OF ARMED FORCE: AN ANALYSIS OF UNITED STATES INVOLVEMENT IN PANAMA AND IRAQ

CHAPTER I

INTRODUCTION

In a speech to the National Press Club in November 1984, then Secretary of Defense Caspar Weinberger stated six criteria to be met prior to armed intervention in a foreign crisis.[1] The criteria, which have become known as the Weinberger Doctrine, were applied (with full compliance) to our recent major military interventions in Panama (1989) and Iraq (1990-91). The six tenets of the Doctrine all make sense and the American people and the Congress seem to be in agreement concerning their applicability. One factor not addressed in the Doctrine is the legality of the use of force under the rules of international law. Because armed intervention is just, ethical, moral, or logical doesn't mean the intervention is legal under the rules of international law, and vice verse. (For this paper the word "just" and the term "just war" are used to encompass the meanings of "just, ethical, moral, righteous, etc.") The Weinberger Doctrine, thus, could guide us into the use of force that is just, but violates established international law.

Most Americans know or assume that the United States' military intervention in Panama and Iraq was just, but they would be surprised to learn that in each case international legal experts have made convincing challenges to the legality of the United States' action. The legal aspects of the interventions were certainly considered by our National Command Authority, and certain actions and statements were driven by their concern for international law. In both cases, however, the decision to intervene with military force was driven more by popular support for what the American people and leadership saw to be just and valid causes, than by the rules of international law.

The purpose of this paper is to examine the international legal aspects and the ethical/moral aspects on the use of military force in Panama and Iraq. Following a brief description of the evolution of our current international laws and on our concepts on the just use of force, I will evaluate our interventions in Panama and in Iraq examining both legal and "just war" aspects. I propose that the legality aspect and the "just war" concept are both vital considerations for our military planners and national leaders. For any current or future contemplation of the use of force, the power and influence of the media in forming public opinion place an even higher demand on the decision to employ military force both justly and legally.

CHAPTER II

HISTORICAL BACKGROUND

"Just War" Origins. The principles of a "just war" and of an "unjust war" were considered important as early as the times of the ancient Greeks and Romans.[1] In ancient Rome a body of priests known as fetiales were empowered to determine whether the justification for the use of force existed. Reasons justifying the use of force included violation of a treaty or territorial boundary against Rome or against one of Rome's allies.[2] The fetiales not only passed judgement on the grounds for going to war, they also reviewed the proceedings leading to the outbreak of hostilities. A demand had to be addressed to the offending party outlining what that party could do to avoid war with Rome and, finally, a formal declaration of war had to be issued.[3] While the fetiales had important civil duties their true importance may be that described by legal scholar, Joachim von Elbe.

> The fetial procedure originated in the belief -- common to all peoples of antiquity and even traceable to modern times -- that battles are fought by providential interference and that victory is a gift of the gods who thereby legitimize the conquests made in war.[4]

War without fetiale approval would be frowned upon the Gods.

The ancient Greeks were less ceremonial but just as serious about the decision to go to war. Early Greek writings attribute Aristotle, Plato, and Alcibiades with philosophical thought concerning the use of military force.[5] Unlike the Roman fetiales, the final decision on war was with the Greek citizens meeting in assembly in true democratic fashion.

The just war concepts born by the Greeks and Romans have prevailed throughout history. Initially Christian doctrine was totally pacifistic, but after the

Roman Empire's shift to Christianity, the Christian Church was compelled to modify this stance.[6] In the Fifth Century, St. Augustine first stated the church's principle that ". . . war was a lamentable phenomenon, but the wrong suffered at the hands of the adversary imposed the necessity of waging just wars."[7] From St. Augustine comes the earliest notion that failure to wage war against a tyrant or aggressor (even if that person is only mistreating his own people or threatening another country) when the capability exists to do so exists, is an unjust act in itself. Building on the principles of St. Augustine, St. Thomas Aquinas, writing in the 13th Century, stated that a just war required three fundamentals. A war, in order to be just, must:

> (1) be waged under the authority of a prince as the responsible leader of a nation. (2) It must have a just cause. and (3) Not only must the cause be just, but the intention must to advance the good or avoid the evil.[8]

St. Augustine and St. Thomas Aquinas both emphasized as an underlying principle that the purpose of war was to restore peace.[9]

The next notable contributor to the evolution of the just war concept was Grotius, a Dutch scholar, jurist, and diplomat. In the 15th Century, he first described a system of international laws adopted by voluntary consent, and he recognized a treaty and the role of allies as factors in determining whether the use of force was just or unjust.[10] For Grotius, a just cause would be defense, recovery of property, or punishment for a wrongdoing. Unjust causes would be the desire for richer land, a desire for part of a state to secede, or a wish to rule others against their will.[11] From Grotius' principles it became evident that both sides of a conflict could be fighting a just war. One side could attack first because its honor had been injured or territory infringed upon, while the other side could fight back in self defense. With war now "just" for both adversaries, excuses for going to war became easier to

justify.[12] It was becoming necessary that centuries old *customary* international laws had to become codified.

International Law. Grotius' description of a system for international relations combined with events of the "modernizing" world laid the groundwork for our current customs and procedures in international law. The Peace of Westphalia, ending the Thirty Year's War in 1648, the European coalitions against Napoleon, and the Congress of Vienna in 1815, that defined Europe upon the defeat of Napoleon, were founded upon Grotius' principles.[13] For the remainder of the 19th and early 20th Centuries, while Grotius' principles endured, many legal scholars scoffed at the idea that war had anything to do with international law. Wars existed and would continue, based simply on natural human desire for just and equitable grounds, despite any international law set forth by conventions or treaties. In fact, war ". . . was regarded as a legitimate means for the attainment of policy objectives."[14]

The Treaty of Versailles, ending World War I, revived the just war concept. The Central Powers, Germany and Austria-Hungary, were specifically punished (not only because they lost the war) for initiating the war with no just cause. Another principle, first addressed in the Versailles Treaty, is that of "self-determination."[15] The various nations of the previous Austria-Hungary Empire were given this right. The concept is just, but it also causes much of the conflict in the world today. The problems of determining what groups have rights in what areas is more difficult now than ever.

Also in the wake of World War I, the League of Nations was formed to provide a system for international law and to be a forum for dispute settlement. The League's covenant stated that settlement of international disputes should be attempted by the League for a period of at least three months before armed force could be used.

It was assumed (or hoped) that a "cooling off" period would quell the desire to fight, so only after the required three month wait would armed force be considered lawful.[16]

During the interwar years another important attempt to outlaw war was the Kellogg-Briand Pact or the Paris Peace Pact of 1928. This document, signed by virtually all of the world's powers, agreed to ". . . renounce war as an instrument of national policy and undertook to settle disputes through pacific means."[17] Neither the League of Nations nor the Kellogg-Briand Pact were successful in deterring World War II because they simply had no provisions or means to enforce the rules. The League of Nations, with Germany as a consenting member, and the Kellogg-Briand Pact, with Germany, Japan, and Italy as signatories, did however, provide the justification for the post war trials at Nuremburg and Tokyo. In both trials the Axis Powers were found guilty of crimes against peace, willfully initiating hostilities in violation of recognized international law.[18] Individuals were also found guilty at these trials of crimes against humanity and of conventional war crimes. One could speculate how the tribunals would have ruled (on the charges of crimes against peace) if the Axis Powers had not been signatories to the agreements.

The current body defining international law is the United Nations. Two specific articles of the U.N. Charter deal specifically with the use of armed force. Article 2(4) states that members are ordered to ". . . refrain from the threat or use of force against the territorial integrity or political independence of any state." Article 51 of the Charter provides one exception to Article 2(4) stating that ". . . nothing in the present Charter shall impair the inherent right of individual or collective self defense if an armed attack occurs . . . until the Security Council has taken measures necessary to maintain international peace and security."[19] These are the two basic articles that the United Nations uses to judge the legality or illegality of the use of armed force. Additionally, force can be can be considered legal by the United Nations if the Security Council passes a resolution authorizing the use of force. This could be done

to uphold principles that the United Nations considers inviolable, such as respect for basic human rights and the right of self determination. These principles, as well as the interpretation of what constitutes self defense, are often controversial and are often based on customary international laws. Armed self defense under customary international law must be both "necessary" and "proportional." "Necessary" implies that peaceful dispute resolution has not worked or will not work and force is the last resort. "Proportional" describes self defense of only sufficient magnitude to deter aggression. For example, destruction of an adversary's industrial base in response to a border skirmish would not be proportional. Customary international laws evolve from usage or precedent, and to a lesser extent, from the writings of legal experts.

One principle organ of the United Nations is the International Court of Justice. The U.N. Charter requires every member nation to comply with the Court's decisions in all applicable cases. If a party to a case fails to comply with a decision, the other party can take the case to the Security Council for recommendations or actions to enforce the decision.[20] Unfortunately, the International Court of Justice has no power of its own to enforce its decisions, and the Security Council, while it has provision to enforce decisions, has only limited means to do so. The Court was conceived to be the clearinghouse for all international disputes. It can do this when dealing with international legal issues - - issues covered by the U.N. Charter. However, ". . .courts are legal institutions and normally have no authority to decide political questions. Yet states are political entities whose disputes invariably have a political dimension."[21] The International Court of Justice, thus, is often forced to pass legal judgement on political matters that are outside the Court's true realm. The resulting decisions ". . .frequently stand alone, totally unsupported by institutional arrangements."[22]

Additional background data is necessary for the analysis of the Panama case. Articles 18 and 21 of the Charter of the Organization of American States, to which the United States and Panama are both signatories, states:

> Article 18. No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. The foregoing principle prohibits not only armed force, but any other form of interference or attempted threat against the personality of the state . . .and
> Article 21. The American states bind themselves in their international relations not to have recourse to the use of force, except in the case of self defense in accordance with existing treaties or in fulfillment thereof.[23]

The United Nations and the Organization of American States (*in the case of* Panama) represent the international legal system under which our National Command Authority ordered the use of force in Panama and Iraq. An analysis on the legality and "justness" of these decisions follows.

CHAPTER III

PANAMA

In his address to the Nation the morning after ordering military actions in Panama, President Bush stated four goals for the forces. These were (1) to safeguard the lives of Americans, (2) to defend democracy in Panama, (3) to combat drug trafficking , and (4) to protect the integrity of thr Panama Canal Treaty.[1] These reasons seemed to pass the test of the Weinberger Doctrine on the use of armed force and the American was generally in support of the decision. The goals stated by the President were the basis on which most Americans formed their personal opinions on whether or not the intervention was just. Most Americans probably had not expended great thought contemplating international legal aspects of the action. The legality of the intervention has been seriously challenged by several legal scholars under the rules set forth by the United Nations and the Organization of American States. Additionally, all (other) OAS members condemned the United States action under the rules of their Charter.

Arguing that the United States military intervention in Panama was illegal, Professor Ved Nanda has written that the death of one U.S. Marine and the beating and threatening of another U.S. serviceman and his wife by Panamian Defense Force personnel did not constitute "necessity" as understood in customary international law, a condition used to justify self defense under Articles 51 and 21 of the U.N. and O.A.S. Charters, respectively.[2] Although Panamian President Noriega had recently "declared war" on the United States and tensions were building, the abuse of American citizens in Panama had not been serious or widespread enough, in his view, to prove the test of "necessity". With respect to human life Professor Nanda does admit that a rescue operation may have been legal under the rules of Article 51 of the

U.N. Charter, but the large scale invasion was clearly in violation of Articles 2(4) and 18 of the U.N. and O.A.S. Charters, respectively.[3]

Professor Nanda's position is totally subjective. The National Command Authority, and at least Secretary of State Baker, believed that there was enough evidence to satisfy any "necessity" requirement. There were unconfirmed intelligence reports that Noriega was planning commando raids against American citizens in Panama. With fear that many more Americans would be killed or terrorized, President Bush and his advisors decided that military action was necessary for the defense of Americans.[4] The right of self defense is interpreted to include anticipatory or preemptive self defense. There is no requirement to wait for an aggressive act to occur (to take the first blow) before initiating force in self defense.[5] Some argue that the defense of individual citizens is not legal or called for, however, there is a logic that since people make up a state, defense of a state's citizens, at home or abroad, is legal under the self defense articles.

Noriega had been defeated the previous May in a popular election for the Presidency of Panama. Upon learning of his defeat, he declared the election void and reaffirmed his control of Panama. Another United States goal was to defend democracy in Panama. On this issue, Professor Nanda states that there was no legal basis for replacing Noriega's tyrannical rule with democracy. While Professor Nanda and other legal scholars do not support Noriega's repressive regime, they see the U.N and O.A.S. Charters as simply and specifically denying the right of one country to invade another country for the purpose of changing the form of government.[6]

Other legal experts interpret Articles 2(4) and 18 differently. U.S. Ambassador to the United Nations, Jeane Kirkpatrick, argues that Article 2(4) ". . . provides ample justification for the use of force in pursuit of the other values also inscribed in the Charter -- freedom, democracy, peace."[7] These principles, along with respect for basic human rights, are mentioned in the preamble to the U.N. Charter and are the

principles that the United Nations is bound to uphold. The United States intervention served to support this aspect of the U.N. Charter by placing in office the democratically elected President of Panama, the leader recognized by the United States. Another legal scholar, Professor Anthony D'Amato, justifies the invasion, not so much to restore democracy, as to overthrow tyranny. He agrees that foreign intervention to establish any type of government is illegal, but to oust an illegitimate tyrant, intervention ". . . is legally justified and morally required."[8] Perhaps if President Bush's second goal had been worded differently, there would have been less arguement about its legitimacy.

Noriega was suspected of aiding international drug traffickers in their quest to ship drugs from South America to the United States. He had been indicted for criminal offenses involving drug trafficking by grand juries in Florida. Elimination of international drug trafficking is a vital interest for the United States. The intervention's method of combatting drug trafficking was to capture Noriega and bring him to justice. If the capture of Noriega had been the only goal for the Panama intervention a division sized force would not have been necessary, but since the force was available, Noriega's capture was a logical goal. While it was desirable to try Noriega in a United States court, his capture by military force was indeed questionable in the eyes of international law and custom. His arrest has been compared to the kidnapping of Adolph Eichmann by Israeli commandos in Argentina in 1960. After that event, Argentina (and no one else) protested Israel's action in the United Nations, but withdrew charges upon Israel's apology. There was no further international debate.[9] Panama didn't protest Noriega's arrest. The new government was quite content not to have him returned. Critics of the Noriega and Eichmann arrests warn of a dangerous precedent that could, for example, strengthen Iran's resolve to arrest Americans anywhere in the world as the Iranian parliament has authorized.[10]

Professor D'Amato, in response to those who claim that Noriega's capture was not justified, writes that ". . . a state is not required under international law to cite valid international law reasons for its actions."[11] While Noriega's capture violated international custom, it did not violate any laws of the United Nations and it did bring a well known international drug trafficker to justice.

President Bush's final goal for the Panamanian intervention was to protect the integrity of the Panama Canal Treaty. Stated in the Treaty were words to the effect that the United States had no right to intervene in the internal affairs of Panama. Any United States intervention would only involve the security and operation of the Canal itself. Professor Nanda argues that the United States intervention on the grounds of protecting the Canal Treaty actually violated the Treaty because the Canal and its operation faced no threat from Noriega's forces.[12] Colonel James Terry, U.S.M.C., another international law expert, cites several violations by Noriega's forces harassing and intimidating U.S. and Panamanian employees of the Panama Canal Commission. In his view, Noriega's provocative behavior provided ample justification under the Canal Treaty provisions for President Bush's decision to use military force.[13]

The international legal experts who disagree with or oppose the United States intervention in Panama tend to analyze separately each of President Bush's four stated goals for the operation. Their analyses logically conclude that there was no legal basis for the United States to intervene with military force in Panama. Taking the other stand, those who believe the intervention to be legitimate in the context of international law provide equally logical arguements. On the side of those favoring the intervention, every goal, by itself, does not have to justify the use of armed force. Any one goal by itself or in combination, could justify the use of force. The decision to intervene in Panama was just and legal -- and the arguement is stronger when the four goals are considered together. The United States was exercising its inherent right of self defense as allowed in Articles 51 and 21 of the U.N. and O.A.S. Charters, respectively. The

United States action in Panama should serve as an important contributor to customary international law.

CHAPTER IV

IRAQ

One main difference between the United States led intervention in Iraq and the unilateral intervention in Panama was the Iraqi intervention's approval by the U.N. Security Council and the support of most of the member states of the United Nations. A Security Council Resolution, by definition, is legal under the international rules of law as set forth by the United Nations. Security Council Resolution 660, passed on 2 August 1990, the same day as the Iraqi invasion of Kuwait, condemned the invasion, demanded Iraqi withdrawal from Kuwait, and called on Iraq and Kuwait to commence diplomatic resolution of their dispute.[1] On 6 August, the Security Council passed Resolution 661 prohibiting all United Nations members from any commercial dealings with Iraq including the purchase of oil.[2] On 29 November 1990, The United Nations Security Council issued its ultimatum to Iraq in Resolution 678, stating that unless Iraq complied with previous resolutions concerning the current crisis, U.N. members would use whatever means necessary to force Iraq into compliance.[3] With the massing of coalition military forces in Saudi Arabia, there was no doubt what the Security Council meant by "necessary" means. With these resolutions there is not an arguement concerning the legality of the United States led coalition military action against Iraq. There has been debate, however, on the validity of the resolutions with regard to the legitimacy of Iraq invading and annexing Kuwait, and on whether the resolutions (especially 678) represented direct United Nations enforcement action or rather United Nations tacit approval of United States dominated defense action.[4] The debate on the latter issue centers on the degree to which the United States formed and dominated the anti-Iraq coalition. Was the coalition acting as an international body of the United Nations or as a bunch of countries trying to remain in favor of the United States?

There exists ample historical background to make a case that Iraq's claim on Kuwait was legitimate. In the late 19th Century, Great Britain, fearing German domination of all of Iraq as a result of a planned Berlin-Bagdad railroad, entered into an agreement with a local chieftain from the Iraqi port of Kuwait in the province of Basra. Great Britain was concerned that German domination of the region would deny them access to a Persian Gulf port, thereby jeopardizing access to India.[5] In return for port access Great Britain promised protection from the Ottoman Turks for the chieftain (a direct ancestor of the current Sheikh). In 1913, still concerned about the railway, Great Britain entered into an agreement with Turkey that gave further autonomy to the Sheikh and legitimacy to the Territory of Kuwait.[6] When Turkey sided with Germany in World War I, Great Britain formally recognized Kuwait as an independent state under British protection. Kuwait sided with the Allies against the Central Powers. Following the War new borders for Kuwait were formally drawn up. The new borders effectively blocked Iraq's access to the sea. In 1961, Great Britain granted Kuwait full independence. Iraq immediately massed troops on Kuwait's border and demanded Kuwait's integration into Iraq. This challenge was peacefully thwarted by British troops. Finally, in 1963, Iraq formally acknowledged Kuwait's independence. Iraqi interest didn't die, however, and tensions persisted.[7]

Kuwait's legitimacy as an independent state, in at least the eyes of the Security Council, is based on the principle of prescription. "Possession, peaceful, undisturbed, and without protest, held for such a length of time as is sufficient to convince the family of states that to maintain it will be in conformity with international order . . ." is the essence of prescription.[8] Professor Shaw J. Dallal argues that prescription is inapplicable, because until 1961, Great Britain, not the Sheikh of Kuwait, controlled Kuwait and that as soon as Great Britain left in 1961, Iraq attempted to reassert control over Kuwait. Additionally, he says Iraq never agreed to the initial formation of Kuwait, and the recognition of Kuwait by Iraq in 1963 was by

a non representative Iraqi government.[9] Other Iraqi justifications for their invasion of Kuwait include: (1) economic self defense against Kuwaiti policy to drive down the price of oil that was bankrupting Iraq, (2) that Kuwait's government was repressive and inhumane, and (3) that Iraqi intervention was invited by political opponents of the Sheikh.[10] These reasons form the legal basis that Iraq's supporters use to question the wisdom or propriety of the Security Council Resolutions against Iraq. Maybe the Security Council should have considered more of this background and not have been so quick to pass the first resolution, 660, condemning the invasion of Kuwait.

Iraq's historical claims to Kuwait and its other "legal" reasons justifying its invasion of Kuwait came too late. Iraq claimed that the coalition's military actions were illegal under the U.N. Charter citing the requirement to attempt to settle disputes peacefully. For this reason, Iraq argued the "all necessary means" clause of Security Council Resolution 678 could not include the use of force. This arguement by Iraq doesn't stand up for several reasons. Prior to invasion on 2 August 1990, Iraq did not exhaust all peaceful means of dispute settlement with Kuwait. Iraqi war crimes and crimes against Kuwaiti citizens had turned the world opinion further against Iraq. Iraq had not cooperated with any of the Security Council Resolutions (demands) to leave Kuwait and to commence diplomatic talks. Iraq's justification for their invasion of Kuwait, whether in self defense, to regain rightful territory, or to oust the "tyrannical" Kuwaiti ruler was seen to be invalid by virtually the entire world. In fact, another legal expert wrote that Iraq's invasion and annexation of Kuwait ". . . constituted especially flagrant violations of international law."[11] It was an aggressive act for which Kuwait and the coalition countries were legal and just in exercising collective self defense.

The issue on whether the coalition military action against Iraq was a United Nations action or simply a U.N. sanctioned, United States led coalition is important. From the United States point of view it was important for the coalition to be seen as a

United Nations action (with the United States taking the lead role). In the wake of the Cold War this was a great opportunity for the United Nations to assert its influence in the new World Order, to establish a coalition against a widely perceived bully, and to establish a precedent that other potential aggressors and tyrants would not be tolerated. Additionally, Persian Gulf oil supply and transportation is of vital national interest to most of the world's nations. The Iraqi invasion of Kuwait was too important an issue to be left solely for resolution by the United Nations Security Council. The United States proposed course of action was necessary to give the Security Council the resolve to make its decisions against Iraq. The United States provided enforcement power to go with the resolutions -- a luxury that the United Nations rarely has. Without this United States leadership the Security Council likely would have passed no significant resolutions past 660, which merely condemned Iraq and called for peaceful settlement.[12] It was shown that only the use of force was effective asgainst Saddam Hussein. It was important for force to be used when it was in January 1991, even though many people said that economic sanctions and diplomacy had not been given adequate time to affect Iraq. The coalition was becoming more and more difficult to keep together both politically and economically. This difficulty did not escape the United States either. Keeping the coalition together for action against Iraq was not so much a military necessity as as it was a desirability to show the United Nations unity of effort against Iraq. "To be sure, precisely when non military means have been exhausted and military means therefore become "necessary" is a judgement regarding which reasonable commanders may differ."[13] Acting as a coalition bolstered the current and future credibility of the United Nations, even though the United Nations did not direct and lead the military forces.

Iraq chose to view the United Nations Resolutions condemning them and authorizing Kuwaiti self defense as the result of successful American manipulation of the Security Council."[14] The Government of Iraq referred to Resolution 678 as being

largely written by U.S. State Department personnel with a lobbying effort to get the resolution accepted. The Washington Post the next day, however, presented the other viewpoint stating ". . . bargaining fell well within accepted norms. . ."[15] While the United States did exercise the leadership role in passing and enforcing resolution 678, the President's motives were just, legal, and forthright. To accuse the United States of pressuring, manipulating, or dominating the other Security Council members is an affront to other members, implying incapability of independent thought and playing down the importance of Persian Gulf oil to the world economy.

The American public had no problem with the coalition military action against Iraq. The tenets of the Weinberger Doctrine were met, and, as the media reported, the action was totally legal, having been sanctioned by the United Nations. That other nations joined the coalition gave the public additional good feeling that the action was just and legal.

CHAPTER V

CONCLUSION

In Panama, the United States armed intervention was an action in self defense to protect Americans citizens in Panama and other vital national interests -- integrity of the Panama Canal Treaty and combatting international drug trafficking. The unilateral intervention was legal under Article 51 of the United Nations Charter.

The United States armed intervention in Iraq was also legal, by definition, because the action was approved by the U.N. Security Council. In both cases, however, the legality was challenged by international legal experts.

International law, both that which is codified by the United Nations and other organizations and that which is customary, is important. This is especially true with regard to *jus ad bellum*, that is the justification for engagement in armed conflict. What is seen as a just cause for resort to armed conflict by the American public may not be legal under the rules of international law. Every attempt should be made to comply with established international law, however, as failure to do so would send the wrong signal to the rest of the world's nations. If the United States expects to maintain its world leadership role and serve as the paragon of righteousness and moral authority, then our military actions must be both just and legal. The world's media amplifies this necessity. The media's ability to inform the public and to control world opinion is continually expanding. In times of crisis regional Commanders in Chief must present military options to the National Command Authority. The military options must meet "necessary" and "proportional" criteria and should be conceived with concern for legitimacy and justness. The legal ramifications of each option must be analyzed and presented along with each option to allow our leadership to make the

best decision for the situation at hand and for the preservation of future order. Military planners, thus, must be well versed not only on purely military capabilities, but also on the international legal aspects regarding the use of force. Professor Carl Bogus, in his article on the rule of international law, quotes a line from the play, A Man For All Seasons, that makes a case for the importance of international law:

> At one point in the play Sir Thomas More's friend, Roper, says that he would "cut down every law in England" to get at the Devil. Sir Thomas More responds: Oh? And when the last law was down, and the Devil turned round on you -- where would you hide, Roper, the laws all being flat? This country's planted thick with laws coast to coast -- man's laws, not God's -- and if you cut them down -- and you're just the man to do it -- d'you really think you could stand upright in the winds that would blow then?[1]

We must lead by example and maintain a healthy respect for international law. It is the military planner's responsibility to understand how military actions could be viewed under the rules of law, and whether or not the media and public will view the action as just.

NOTES

Chapter I

1. Richard Halloran, "U.S. Will Not Drift Into A Latin War, Weinberger Says," The New York Times, 29 November 1984, pp. A1:3 and A4:1.

The six tenets of the Doctrine are: (1) The use of armed force shall be in support of a vital national interest. (2) There must be an intent to win. (3) Political and military objectives must be clearly defined. (4) The forces committed must be sufficient to meet the objective. (5) The American people must support the use of force. (6) The use of armed force must be a last resort.

Chapter II

1. Joachim von Elbe, "The Evolution of the Concept of the Just War in International Law," The American Jounal of International Law, 1939, p.666.

2. Yoram Dinstein, War, Aggression, and Self Defense (Cambridge: Grotius Publications Limited. 1988), p.62.

3. Dinstein, p.61.

4. von Elbe, p.666.

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